

# CALIFORNIA STATE BOARD OF EDUCATION

## MARCH 2004 AGENDA

<b>SUBJECT</b>  Vision Testing: Adopt Proposed Amendments to <i>California Code of Regulations, Title 5, Education</i> , Division 1, Chapter 2, Subchapter 3, Article 4	<input checked="" type="checkbox"/> <b>Action</b>
	<input checked="" type="checkbox"/> <b>Information</b>
	<input type="checkbox"/> <b>Public Hearing</b>

### RECOMMENDATION

Consider comments received during the public comment period and at the public hearing and take action to adopt regulations.

### SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

At the January 2004 meeting, the State Board of Education approved proposed regulations regarding vision testing for a 45-day public comment and review period. Written comments must be received by 5 p.m. on March 8, 2004, and a public hearing is scheduled for March 9, 2004.

### SUMMARY OF KEY ISSUES

The purpose of the proposed amended regulations is to provide clarification for implementing *Education Code* sections 49452, 49455, and 49456. The current regulations were adopted between 1973 and 1977. Since that time, technology has changed the way vision testing is done, and more recent legislation has changed who may provide testing in the schools. Specifically, the proposed amended regulations:

- Clarify who may administer vision tests to pupils;
- Replace a brand name vision testing product with a generic term (thus offering the LEAs greater opportunities to be reimbursed for vision testing services through the LEA Medi-Cal Billing Option); and
- Clarify when a reevaluation for test failure is required.

A summary of comments received during the 45-day public comment period and at the public hearing, as well as any potential amendments based on those comments, will be presented at the March State Board meeting in a last minute memorandum.

### FISCAL ANALYSIS (AS APPROPRIATE)

According to the Economic and Fiscal Impact Analysis, there is no fiscal impact as a result of these regulations. See Attachment 4 for details.

### ATTACHMENT

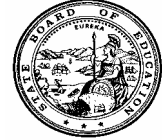
- [Attachment 1](#): Notice of Proposed Rulemaking (4 Pages)  
[Attachment 2](#): Initial Statement of Reasons (3 Pages)  
[Attachment 3](#): Proposed Amendments to the *California Code of Regulations* (4 Pages)  
Attachment 4: Economic and Fiscal Impact Analysis (5 Pages) (This attachment is not available for Web viewing. A printed copy is available for viewing in the State Board office.)

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

**CALIFORNIA STATE BOARD OF EDUCATION**

1430 N Street; P.O. Box 944272  
Sacramento, CA 95814-5901



**TITLE 5. EDUCATION**

**CALIFORNIA STATE BOARD OF EDUCATION**

**NOTICE OF PROPOSED RULEMAKING**

**Vision Testing**

**Notice published January 20, 2004**

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

**PUBLIC HEARING**

Program staff will hold a public hearing from **12:30 p.m. to 2:30 p.m. on March 9, 2004**, at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. The Superintendent requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. The written comment period ends at **5:00 p.m. on March 8, 2004**. The State Board will consider only written comments received by the Regulations Adoption Coordinator by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator  
California Department of Education  
LEGAL DIVISION  
1430 N Street, Room 5319  
Sacramento, California 95814  
E-mail: [dstrain@cde.ca.gov](mailto:dstrain@cde.ca.gov)  
Telephone: (916) 319-0641  
FAX: (916) 319-0155

## **AUTHORITY AND REFERENCE**

Authority: Section 33031, *Education Code*.

Reference: Sections 44873, 44877, 44878, 49452, 49455 and 49456, *Education Code*.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The State Board proposes to amend Sections 591, 592, 593, 594, 595, and 596 in Title 5 of the *California Code of Regulations* (CCR). These sections concern the screening of pupil vision in the public schools.

The purpose of the proposed amended regulations is to provide clarification for implementing *Education Code* sections 49452, 49455, and 49456. Specifically, the proposed amended regulations clarify who may administer vision tests to pupils, what types of tests may be performed, and when a reevaluation for test failure is required. Technical amendments to each section include the addition of authority and reference citations.

*Education Code* sections 49452, 49455, and 49456 provide for vision screening in selected grades, basic components of the school vision testing program, and parent notification of suspected vision defects.

Section 590 as amended will replace the old name "Department of Public Health" with the current name "Department of Health Services." The amendments provide other technical changes consistent with existing statute.

Section 591 as amended will reflect technical changes consistent with existing statute. The amendments remove "ophthalmologist," as ophthalmologists are a subset of physicians already on the list of duly authorized providers of vision tests, and add "osteopath," as osteopaths are licensed in California as a separate body. The amendments replace the term "screening" with "testing" to provide consistency with statute.

Section 592 as amended will reflect changes in technology and replace a brand name test with a generic term. The amendments also replace the term "screening" with "testing" to provide consistency with statute. Additionally, the amendments reflect technical changes consistent with existing statute.

Section 593 as amended will replace the term "eye screening test" with the term "vision test" to more accurately express the type of testing performed in the schools.

Section 594 as amended will reflect changes in technology and replace a brand name test with a generic term. This amended section will also clarify when a reevaluation for test failure is required. The amendments reflect technical changes consistent with existing statute. The amendments also eliminate a reference to the preparation and periodic update of program guidelines related to vision testing.

Section 595 as amended will replace the term "examination" with the term "appraisal" to more accurately express the type of testing performed in the schools. Additionally the

amendment will specify color vision appraisal for male pupils that is pursuant to the *Education Code* sections also specified in the amendment.

Section 596 amendments reflect technical changes consistent with existing statute.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agency or school district which must be reimbursed in accordance with *Government Code* section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Affect on small businesses: The proposed regulations will have no affect on small businesses because they only apply to local educational agencies.

### **CONSIDERATION OF ALTERNATIVES**

In accordance with *Government Code* section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

### **CONTACT PERSONS**

Inquiries concerning the substance of the proposed regulations should be directed to:

Linda Davis-Alldritt, Consultant  
California Department of Education  
**SCHOOL HEALTH CONNECTIONS**  
1430 N Street, Suite 6408  
Sacramento, CA 95814  
E-mail: [visionregs@cde.ca.gov](mailto:visionregs@cde.ca.gov)  
Telephone: (916) 319-0284

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Adoption Coordinator, or to the backup contact person, Najia Rosales, at (916) 319-0584.

#### **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board of Education makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

#### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's website at <http://www.cde.ca.gov/regulations>

**INITIAL STATEMENT OF REASONS**  
**SECTIONS 591 – 596.**

**SPECIFIC PURPOSE OF THE AMENDED REGULATIONS**

The proposed amended regulations will provide clarification for implementing *Education Code* sections 49452, 49455, and 49456. Specifically, the regulations clarify who may administer vision tests to pupils, what types of tests may be performed, and when a reevaluation for test failure is required.

**NECESSITY/RATIONALE**

The existing regulations were last amended in 1977. Since that time, there have been changes in vision testing techniques that are not reflected in the existing regulations. *Education Code* Section 49452 requires LEAs to test the vision of each pupil enrolled in the district's schools and specifies the individuals qualified to perform vision testing. *Education Code* Section 49455 specifies the frequency and basic components of the school vision testing program. The *California Code of Regulations* sections 590-596 provide guidance on vision testing; however, the language in the existing regulations limits the type of testing tool to the Snellen chart. While the Snellen chart is one type of testing tool, as technology has evolved, there are other vision testing tools now available to LEAs. The amended version of the regulations would replace the word "Snellen" with the generic term "optotype" and thereby not limit LEAs to one particular brand of testing tool.

The amendment to the *California Code of Regulations* section 594 provides guidance on sending written notice to the parents or guardians of pupils who do not pass the initial vision screening and follow-up reevaluation.

Other amendments to the existing regulations reflect statutory changes since 1977.

**Section 590. Duly Authorized Agency Defined.**

The amendments reflect technical changes consistent with existing statute.

Note: Authority cited: Section 33031, *Education Code*. Reference: Section 49452, *Education Code*.

**Section 591. Employees Authorized to Give Tests.**

The amendments reflect technical changes consistent with existing statute.

The amendments remove "ophthalmologist," as ophthalmologists are a subset of physicians already on the list of duly authorized providers of vision tests, and add "osteopath," as osteopaths are licensed in California as a separate body.

The amendments replace the term "screening" with "testing" to provide consistency with statute.

Note: Authority cited: Section 33031, *Education Code*. Reference cited: Sections 44873, 44877, 44878, and 49452, *Education Code*

**Section 592. Acceptable Course in Vision Screening.**

The amendments reflect changes in technology and replace a brand name test with a generic term.

The amendments replace the term “screening” with “testing” to provide consistency with statute.

The amendments reflect technical changes consistent with existing statute.

Note: Authority cited: Section 33031, *Education Code*. Reference: Section 49452 *Education Code*.

**Section 593. Responsibility as to Eligibility.**

The suggested term “vision test” replaces the term “eye screening test” to more accurately express the type of testing performed in the schools.

Note: Authority cited: Section 33031, *Education Code*. Reference: Section 49452, *Education Code*.

**Section 594. Examination of Visual Acuity.**

The amendments reflect technical changes consistent with existing statute.

The amendments reflect changes in technology and replace a brand name test with a generic term.

The amendments clarify when a reevaluation for test failure is required.

The amendments eliminate a reference to the preparation and periodic update of program guidelines related to vision testing.

Note: Authority cited: Section 33031, *Education Code*. Reference: Sections 33308.5, 49452, 49455, and 49456, *Education Code*

**Section 595. Appraisal of Color Vision.**

The amendments replace the term “examination” with the term “appraisal.”

The amendments specify color vision appraisal for male pupils and add related Education Code sections.

Note: Authority and Reference cited: Section 33031, *Education Code*. Reference: Section 49452 and 49455, *Education Code*.

**Section 596. Gross External Observation of the Children’s Eyes, Visual Performance and Perception.**

Section 596 amendments reflect technical changes consistent with existing statute.

Note: Authority cited: Section 33031, *Education Code*. Reference: Section 49452 and

49455, *Education Code*.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.**

The State Board did not rely upon any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

**REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.**

This proposal is to amend out dated regulations, not create new regulations. Therefore, the consideration of alternatives is not applicable.

**REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.**

As no adverse impact on small business has been identified, there is no need to examine reasonable alternatives to lessen the impact.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.**

The proposed regulations would not have a significant adverse economic impact on any business.



**Title 5. EDUCATION**

**Division 1. State Department of Education**

**Chapter 2. Pupils**

**Subchapter 3. Health and Safety of Pupils**

**ARTICLE 4. VISION SCREENING TESTING**

*Amend Sections 590 – 596 to read:*

**§590. Duly Authorized Agency ~~Defined.~~**

“A duly authorized agency,” as used in Pursuant to Education Code Section 49452, ~~means a county superintendent of schools may contract with an agency duly authorized to~~ provide vision tests, which includes a city or county health department, a local health district, or the State Department of ~~Public Health~~ Services.

NOTE: Authority cited for ~~Article 4: Section 33031 and 49452~~, Education Code. ~~Issuing agency: Superintendent of Public Instruction.~~ Reference: Section 49452, Education Code.

**§591. Employees Authorized to Give Tests.**

(a) An employee of the governing board a school district or of the a county superintendent of schools who may be required or permitted authorized to give vision tests pursuant to Education Code Section 49452 to pupils enrolled in the district and may be designated a “duly qualified supervisor of health” within the meaning of that section if the employee is one of the following:

~~(a) A physician, ophthalmologist, optometrist, or nurse who holds both:~~  
~~(1) A certificate of registration from the appropriate California board or agency.~~  
~~(2) A health and development credential, or a standard designated service credential with a specialization in health.~~

(1) A physician and surgeon or osteopath employed pursuant to Education Code Section 44873.

(2) A school nurse employed pursuant to Education Code Section 44877.

(3) An optometrist employed pursuant to Education Code Section 44878.

~~Such an employee is a “qualified supervisor of health” as used in this article and in Education Code Section 49452.~~

(b) Any other certificated employee of the school district or of the county superintendent of schools who holds a teaching credential issued by the State Board and who has filed

1 ~~with the employing school district or county superintendent of schools, as the case may be,~~  
2 may be authorized to give vision tests pursuant to Education Code Section 49452 if the  
3 employee has one of the following documents:

4 (1) A statement from a qualified supervisor of health that the employee has satisfactorily  
5 completed an acceptable course of in-service training in techniques and procedures in  
6 vision ~~screening~~ testing of at least six clock hours given by the qualified supervisor of  
7 health making the statement and that the employee is qualified to administer vision tests to  
8 pupils.

9 (2) A transcript from an accredited college or university evidencing that the employee  
10 has successfully completed an acceptable course in vision ~~screening~~ testing of at least one  
11 semester unit.

12 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 44873,  
13 44877, 44878, and 49452, Education Code.

14 **§592. Acceptable Courses in Vision ScreeningTesting.**

15 An acceptable course in vision ~~screening~~ testing is one that provides the following:

16 (a) Basic knowledge of the structure, normal development, and function of the eye and  
17 common anomalies of vision and factors influencing visual performance.

18 (b) Basic knowledge of signs and symptoms suggesting eye difficulty.

19 (c) Techniques and procedures in administering ~~Snellen-optotype~~ and color vision tests.

20 Such techniques and procedures shall include training in the following:

21 (1) Establishing tests rapport with pupils.

22 (2) Seating of pupil and placing of equipment.

23 (3) Providing adequate lighting conditions for the testing situation.

24 (4) Recording test results.

25 (5) Referring pupils in need of follow-up.

26 (d) Practice in administering ~~Snellen-optotype~~ and color vision tests under the  
27 supervision of a duly qualified supervisor of health.

28 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 49452,  
29 Education Code.

30 **§593. Responsibility as to Eligibility.**

Each school district and county superintendent of schools shall determine and be responsible for the eligibility of personnel employed or permitted by the district or county superintendent of schools to administer ~~eye screening~~ vision tests or to conduct inservice training programs in techniques and procedures in administering such tests.

NOTE: Authority cited: Section 33031, Education Code. Reference: Section 49452.

**§594. Examination-Test of Visual Acuity.**

(a) ~~The following definitions shall apply to terms used in~~ test of visual acuity administered pursuant to Education Code Sections 49452 and 49455. ~~The examination of visual acuity shall mean a test for visual acuity at the far point. This shall be conducted by means of the Snellen Test~~ an optotype test. ~~Conduct of the test and the testing environment shall conform to procedures and settings as described in guidelines the most recent edition of "A Guide for Vision Testing in California Public Schools." issued by the California Department of Education. Consistent with the requirements of Education Code Section 33308.5, the California Department of Education may prepare and periodically update program guidelines relating to vision testing.~~ Test failure for the initial vision visual acuity test shall be defined as follows:

(a~~1~~) For children under six years of age: ~~Vision-Visual~~ Visual acuity of 20/50 or worse. The designation 20/50 or worse indicates the inability to identify accurately the majority of letters or symbols on the 40-foot line of the test chart at a distance of 20 feet.

(b~~2~~) For children six years of age or older: Visual acuity of 20/40 or worse. This means the inability to identify the majority of letters or symbols on 30-foot line of the chart.

(c~~3~~) For all children: A difference of visual acuity between the two eyes of two lines on the ~~Snellen Chart~~ optotype chart. This means, for example, visual acuity of 20/20 in one eye and 20/40 in the other or 20/30 in one eye and 20/50 in the other.

(b) If a pupil fails a visual acuity test that is conducted by an employee authorized to give vision tests pursuant to subdivision (b) of Section 591, ~~Following failure of the initial vision acuity screening test,~~ a reevaluation shall be ~~accomplished~~ conducted prior to ~~referral for definitive professional evaluation~~ a report being made to the pupil's parent or guardian. This reevaluation shall be ~~done by persons~~ conducted by an employee authorized to give vision tests pursuant to subdivision ~~as per Section 591(a) of this Article~~ Section 591.

1 (c) If a pupil fails a visual acuity test conducted by an employee authorized to give  
2 vision tests pursuant to subdivision (a) of Section 591, a report shall be made to the pupil's  
3 parent or guardian as required by Education Code Section 49456.

4 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 3308.5,  
5 49452, 49455, and 49456, Education Code.

6 **§595. Examination-Appraisal of Color Vision.**

7 The ~~examination-appraisal~~ of color vision ~~as used in~~ male pupils pursuant to Education  
8 Code Sections 49452 and 49455 shall mean a test employing pseudoisochromatic plates.  
9 Procedures and criteria of failure as described by the manufacturer shall be used.

10 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 49452 and  
11 49455, Education Code.

12 **§596. Gross External Observation of the Children's Eyes, Visual Performance and**  
13 **Perception.**

14 Gross external observation of the children's eyes, visual performance and perception,  
15 ~~as used in~~ pursuant to Education Code Sections 49452 and 49455, shall mean continuous  
16 observation by teachers of the appearance, behavior and complaints of pupils that might  
17 indicate vision problems. Also, periodic investigation where pupils' school performance  
18 begins to give evidence that existence of the problem might be caused by a visual difficulty.  
19 Such an evaluation shall be done in consultation with the school nurse.

20 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 49452 and  
21 49455, Education Code.

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